BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5715 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

GRACE M. VERN

PRECEDENT
BENEFIT DECISION
No. P-B-197

FORMERLY
BENEFIT DECISION
No. 5715

The above-named claimant appealed to a Referee (LA-40037) from a determination of the Department of Employment, which held that the claimant was not entitled to benefits under Section 57(c) and 57(e) of the Unemployment Insurance Act (now sections 1253(c) and 1253(e) of the Unemployment Insurance Code, respectively). Prior to the issuance of the Referee's decision, the California Unemployment Insurance Appeals Board on January 22, 1951, removed the matter to itself under Section 72 of the Act.

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

The claimant was last employed as a general office clerk for approximately ten months by a manufacturing company located in Los Angeles County when she was laid off on October 31, 1950, for lack of work.

On November 1, 1950, the claimant registered for work and reopened a claim for benefits in the Inglewood Office of the Department of Employment. On December 7, 1950, the Department issued a determination denying benefits for the week ending December 5, 1950, on the ground that the

claimant had not sought work during the week as required under Section 57(e) of the Act. The Department also determined that the claimant was ineligible for benefits for the period beginning November 29, 1950, on the ground that she was not available for work within the meaning of Section 57(c) of the Act.

For the week ending December 5, 1950, the claimant submitted a list of employers that she had contacted. The claimant had left written applications for employment with three of the employers. She had made inquiries at the personnel desk of the remaining firms and had been advised that there were no openings at the time.

In the month of December, 1950, the claimant was in her seventh month of pregnancy. The local office did not make referrals of women who were noticeably pregnant because employers in that area would not hire such women and objected to the Department referring pregnant women. There was an active labor market for clerk-typists. The claimant was a clerk-typist who imposed no restrictions upon acceptable employment and stated that she was able to work. The claimant's physician informed the Department that as far as he was concerned the claimant was able to work and that he advised all of his pregnant patients to continue working as long as possible unless the pregnancy was not normal.

REASON FOR DECISION

Regarding the claimant's search for work during the week ending December 15, 1950, we believe that the record does not establish that the claimant failed to follow a course of action which was reasonably designed to result in her prompt reemployment in suitable work, considering the customary methods of obtaining work in her usual occupation or for which she was reasonably fitted, and the current conditions of the labor market. The claimant submitted a list of employers that she had contacted, three of whom were specifically mentioned in the record. In the absence of evidence as to what means and how many names were on the list that the claimant submitted, we are of the opinion that the claimant made an adequate search for work for the week ending December 5, 1950. (Benefit Decision No. 5457-12899).

Regarding the claimant's eligibility under Section 57(c) of the Act, the claimant was discharged for lack of work from her most recent employment and did not voluntarily leave her employment or seek a leave of absence because of pregnancy. The claimant's physician was of the opinion that the

claimant was able to work and the claimant stated that she was physically able to continue in her customary employment as a clerk-typist. There was an active labor market for clerk-typists. The claimant placed no restrictions upon suitable work. The fact that the Department would not refer pregnant women was a matter of policy of the local office and did not affect the claimant's availability for work when it was shown that she placed no restrictions upon suitable work and there was a labor market. We hold, therefore, that the claimant met the availability requirements of Section 57(c) of the Unemployment Insurance Act during the period involved herein. (Benefit Decision 4650-8480, 4948-9696, see 5641-16171).

DECISION

The determination of the Department is reversed. Benefits are payable if the claimant is otherwise eligible.

Sacramento, California, January 29, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent.

The premises underlying the majority opinion in this case are 1950 policies of the Department and the 1950 labor market for clerk-typists in Los Angeles. A quarter-century has passed, and (hopefully) an enlightened society has developed a more tolerant acceptability of the noticeably pregnant female as a part of today's work force. In 1950, the Department policy appears to have precluded the referral of noticeably pregnant females to potential job openings. Because of this Board's procedures, we do not have the input of the Department as to its contemporary policies (see my dissenting opinion in P-B-168), or as to what the current labor market situation is for noticeably pregnant female clerk-typists.

Moreover, it appears that the decision being elevated to precedent status by the majority may not have been supported by the evidence, which is a fatal flaw under section 1094.5 of the Code of Civil Procedure. The first paragraph of the Reasons for Decision states:

> "In the absence of evidence as to what means and how many names were on the list that the claimant submitted, we are of the opinion that the claimant made an adequate search for work for the week ending December 5, 1950." (Emphasis added)

I feel relatively certain that today the Department requires each claimant to set forth the names of at least a minimum number of potential employers contacted each week. In addition, I trust that no Administrative Law Judge will interpret this precedent as meaning that a finding of an adequate work search can be supported by an "absence of evidence" of how many potential employers were contacted and their names.

The best that can be said for this case is that it is compatible with today's craze for nostalgia, but it appears to be badly lacking in precedent value to bind the Department and the Administrative Law Judges.

HARRY K. GRAFE